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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 YOLANDA BROWN,

16 Defendant.

) NO. CR 15-00442-TEH
) NO. CR 16-00441-TEH

) **UNITED STATES' SENTENCING**
) **MEMORANDUM**

) Sentencing Date: February 27, 2017
) Time: 2:30 p.m.
) Judge: Hon. Thelton E. Henderson

1 **I. INTRODUCTION**

2 The defendant, Yolanda Brown, stands before the Court to be sentenced following her guilty plea
 3 to Count One of Case No. CR 15-00442, possession with intent to distribute and distribution of more
 4 than 50 grams of actual methamphetamine, in violation of 21 U.S.C. § 841(a)(1). She also stands before
 5 the Court to be sentenced following her guilty pleas to a prolonged series of criminal offenses (charged
 6 in Case No. CR 16-00441) which she committed after she absconded from pretrial release in the earlier
 7 case: five counts of bank robbery, in violation of 18 U.S.C. § 2113(a); and one count of being a felon in
 8 possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Given the defendant's persistent and
 9 escalating criminal history over the last three decades, the repetitive and ongoing nature of the offenses
 10 committed while the defendant was a fugitive, and her demonstrated danger to the community, the
 11 government respectfully requests that the Court impose a custodial sentence of 180 months in prison to
 12 be followed by five years of supervised release, mandatory restitution as set forth in the plea agreement
 13 and the Presentence Investigation Report (PSR), an expanded search condition as stipulated to by the
 14 parties in the plea agreement, forfeiture of the firearm and ammunition involved in the offense, and a
 15 mandatory special assessment of \$100 per count of conviction.

16 **II. SENTENCING GUIDELINES CALCULATIONS**

17 The government concurs with the PSR's Guidelines calculation which results in a total combined
 18 offense level of 32.¹ The government also agrees that the defendant's prior felony and misdemeanor
 19 convictions score her seven criminal history points, resulting in a Criminal History Category (CHC) of
 20 V. The Guidelines range for an offense level of 32 and CHC V is 168-210 months in prison.

21 **III. DISCUSSION**

22 **A. Applicable Law**

23 Section 3553(a) directs courts to consider a number of factors in determining an appropriate
 24 sentence. In this case, these factors indicate that a sentence of 180 months is sufficient, but not greater
 25 than necessary, to achieve the goals of sentencing. *See United States v. Carty*, 520 F.3d 984, 991 (9th
 26

27 ¹ In the plea agreement, the parties appear to have miscalculated the combined offense level by
 28 one point when grouping the various counts. Neither the defense nor the government has objected to the
 corrected offense level provided by U.S. Probation.

1 Cir. 2008). The key factors are the nature and circumstances of the offense and the history and
 2 characteristics of the defendant, 18 U.S.C. § 3553(a)(1), the need to afford adequate deterrence to
 3 criminal conduct, *id.* § 3553(a)(2)(B), and the need to protect the public from further crimes of the
 4 defendant *id.* § 3553(a)(2)(C).

5 Although the Supreme Court’s decision in *Booker* has rendered the Sentencing Guidelines
 6 advisory, the Guidelines still remain the “starting point and initial bench-mark” for sentencing.
 7 *Kimbrough v. United States*, 552 U.S. 85, 108, (2007) (internal quotation marks and citation omitted);
 8 *see Carty*, 520 F.3d at 991 (en banc); *United States v. Ellis*, 641 F.3d 411, 415 (9th Cir. 2011). While
 9 there is no presumption of reasonableness for a Guidelines range sentence, if a district judge “decides
 10 that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure
 11 that the justification is sufficiently compelling to support the degree of the variance.” *Carty*, 520 F.3d at
 12 991-992 (citing *Gall v. United States*, 552 U.S. 38, 50, (2007)); *see also United States v. Munoz-*
 13 *Camarena*, 631 F.3d 1028, 1030 (9th Cir. 2011) (“district court must start with the recommended
 14 Guidelines sentence, adjust upward or downward from that point, and justify the extent of the departure
 15 from the Guidelines sentence.”). As the Supreme Court recognized in *Gall*, “a major departure should
 16 be supported by a more significant justification than a minor one.” 552 U.S. at 50. Finally, “[a]s a
 17 general rule, the preponderance of the evidence standard is the appropriate standard for factual findings
 18 used for sentencing.” *United States v. Armstead*, 552 F.3d 769, 777-78 (9th Cir. 2008); *see, e.g., United*
 19 *States v. Treadwell*, 593 F.3d 990, 1001 (9th Cir. 2010).

20 **B. Sentencing the Defendant to 180 Months’ Imprisonment Would Vindicate the**
 21 **Interests Set Forth in 18 U.S.C. § 3553(a).**

22 The defendant’s criminal history spans nearly three decades. Her criminal history is remarkable
 23 not only for its longevity, but also for the frequency and regularity of arrests and convictions. This is not
 24 the defendant’s first conviction for an offense involving a loaded firearm. Nor is it her first conviction
 25 for narcotics trafficking. But until very recently, her crimes had never included anything approaching
 26 armed bank robbery. (*See* PSR ¶¶ 78-90, 94-106.)² It is now escalating. Indeed, despite multiple
 27

28 ² This memorandum does not repeat the detailed facts surrounding the defendant’s previous
 convictions and arrests as described in the PSR. The government notes the serious nature and extended
 UNITED STATES’ SENTENCING MEMORANDUM

1 encounters with the criminal justice system from a young age, and opportunities to reform, the defendant's
2 criminal conduct has continued unabated and undeterred by numerous arrests, convictions, and periods of
3 incarceration. (*See id.*) In the 27 years spanning 1988 to 2015, the defendant accumulated 13
4 convictions (seven felonies and six misdemeanors - excluding the current charges), as well as at least 17
5 arrests. (*Id.*) The frequency and continuous nature of the defendant's felonious conduct and arrest record
6 are even more remarkable when compared against numerous periods of incarceration and judicial
7 supervision during the same time frame.

8 Her conduct over the last several years underscores the rising danger she poses to the community.
9 Perhaps most concerning, however, is the violent escalation in the defendant's criminal conduct after she
10 absconded from pretrial supervision in her original federal case. While on pretrial release in 2015, she was
11 given the opportunity to pursue drug treatment on two separate occasions. She was terminated from both
12 treatment programs, however, for misconduct (on one occasion for threatening a staff member at
13 Newbridge with violence). Rather than surrender and face the Court after her second termination,
14 however, the defendant chose instead to become a fugitive. And while evading law enforcement for more
15 than six months, she committed a string of five bank robberies – threatening her victims with violence
16 and/or death each time. Not surprisingly, when the defendant was finally apprehended, the police found
17 her in possession of a loaded firearm.

18 Ultimately it appears that, despite multiple approaches to rehabilitation over the last three
19 decades, no sentence and no amount of supervision has come close to protecting the community or
20 earning the defendant's respect. A substantial sentence is now required protect the public and impress
21 upon the defendant the need to refrain from future criminality. Accordingly, given all the factors set
22 forth under § 3553(a), the government respectfully submits that a 180-month term of imprisonment
23 would be sufficient, but not greater than necessary, to achieve the goals of sentencing.

24 For the same reasons, the government recommends that the Court impose a five-year term of
25 supervised release with a special search condition as set forth in the plea agreement:
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27
28 pattern of these offenses, however, and urges the Court to give them careful consideration when
evaluating the defendant's criminal history.

1 The defendant shall submit her person, residence, office, vehicle, electronic devices and
2 their data (including cell phones, computers, and electronic storage media), and any
3 property under defendant's control to a search. Such a search shall be conducted by a
4 United States Probation Officer or any federal, state, or local law enforcement officer at
any time, with or without suspicion. Failure to submit to such a search may be grounds
for revocation; the defendant shall warn any residents that the premises may be subject to
searches.

5 Given the defendant's persistent criminality and her demonstrated unwillingness and/or inability to
6 comply with the law and court orders, the requested search condition is needed to serve the interests of
7 deterrence and rehabilitation.

8 **IV. CONCLUSION**

9 In full consideration of the defendant's history and characteristics together with the goals of
10 sentencing, the government respectfully requests that the Court sentence the defendant to 180 months in
11 prison. The government recommends that this term in custody be followed by five years of supervised
12 release, the search condition set forth in the plea agreement, a \$100 special assessment per count of
13 conviction (\$700), restitution as set forth in the plea agreement and the PSR, and forfeiture of the
14 firearm and ammunition involved in the offense.

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16 DATED: February 13, 2017

Respectfully submitted,

17 BRIAN J. STRETCH
18 United States Attorney

19 _____
20 /s/
SCOTT D. JOINER
21 Assistant United States Attorney
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